

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Application of AT&T Corp. and) CC 98-24
Teleport Communications Group,)
Inc. for Transfer of Control)

KEITH MAYDAK'S REPLY COMMENTS

(to BellSouth Corporation's Motion to Dismiss;
AT&T Corp.'s Opposition to Motion to Dismiss;
and, BellSouth Corporation's Petition for Approval)

To the Commission:

Keith Maydak ("Maydak") respectfully replies to the Motion to Dismiss filed by BellSouth Corporation ("BellSouth") and AT&T Corp.'s ("AT&T") Opposition thereto and also BellSouth's Petition for Approval with Conditions:

I. BELLSOUTH'S MOTION TO DISMISS AND PETITION FOR APPROVAL WITH CONDITIONS SHOULD BE CONSTRUED AS A PETITION TO DENY AND CONSEQUENTLY SUSTAINED

BellSouth has asked the Commission to, on the one hand dismiss AT&T's application, and on the other to grant it on the condition that the Bell Operating Companies be allowed to provide interstate communications services in their own regions.

Maydak agrees that AT&T should not be able to acquire Teleport Communications Group, Inc. ("Teleport" or "TCG"), when the BOC's have no entry into the long distance market. However, the relief BellSouth seeks can not be granted. That is, the Commission does not have the statutory power to allow the Bell Operating Companies to enter the long distance market through this

proceeding. On the contrary, BellSouth and others must file a §271 petition. But see SBC Communications v. F.C.C., 981 FSupp. 996 (N.D. Tex. 1997), appeal pending.

However, the arguments advanced by BellSouth are meritorious and show that AT&T's petition should be denied. Specifically, the acquisition is not in the public interest as it will create an entity which will have an unfair advantage in the marketplace. That is, AT&T will swallow a maverick telecommunications company not to benefit the public but to gain neo-monopoly power. Indeed, AT&T will not only be the largest interstate communications provider, but also the largest competitive local exchange carrier. This situation, in addition to AT&T's position as the largest internet provider and wireless provider coupled with the purchase of TCG's and ACC Corp.'s long distance customers, presents serious concerns to the public interest which are not overcome by AT&T's vague assertions made in the one and a half pages devoted to the public interest portion of its application for transfer.

It is well established that AT&T must provide enough factual information to sustain its burden of proof to show the application is in the public interest. See, e.g., Pacific Telesis Group and SBC Communications, Inc., FCC 97-28 (Jan. 31, 1997). AT&T simply has not done so, nor could it. The merger will have a negative effect on competition, pricing, and services available to customers.

A. The Merger of AT&T and Teleport Will Turn a Maverick Into a Neo-Monopoly

Teleport is clearly a maverick in the communications

field. Indeed, it is the nations largest competitive local exchange carrier. AT&T Application at 7. On February 24, 1998, Teleport announced that its fourth quarter revenues increased seventy-two percent (72%) on strong demand for switched services and high speed data. Reuters, Feb. 25, 1998. Teleport competes with AT&T to provide long distance services in 22 major markets. Teleport Reg. Statement at 7. Moreover, Teleport recently acquired ACC Corp., a facilities based long distance company that competes by undercutting AT&T. ACC Corp. Form 10-K, S.E.C. March 27, 1997 at 2, 8.

Teleport's success in the marketplace would continue without the proposed merger as it is clearly a formidable competitor.

On the other hand, the merger will eliminate this competitor and all that it will bring to the future marketplace will be lost. This, in itself, defeats the assertions made by AT&T in the page and a half claiming that it will bring additional products to consumers.

However, the proposed merger offends the public interest in additional ways. That is, the merger would eliminate competition and create a neo-monopoly.

As the Commission is aware, AT&T is the largest interstate long distance carrier, yet the merger would add Teleport's long distance traffic and ACC Corp.'s competing traffic to AT&T's monster customer base. Teleport's CERFNET, a Tier One internet backbone provider, would also be swallowed by AT&T's internet service, of which is already the largest provider of internet access to consumers. These additions to AT&T's arsenal, in addition to its dominant position in the wireless and international markets, shows that competition will be impeded, and especially so with respect to

smaller entrepreneurial companies. As such, the merger would not be in the public interest nor would it bring about additional choices to the public.

B. Prices Will Not Decrease for the Public

A review of AT&T's recent tariff revisions shows that, with the exceptions of current promotional schemes, prices for service are rising despite AT&T's expenses and access charges having been reduced.

In fact, AT&T cajoles consumers into signing up for AT&T based on special deals. Then, in tiny (1½" x 1½") newspaper ads, AT&T silently raises the prices while offering new customers better deals. See, e.g., Declaration of Keith Maydak attached to his Petition to Deny, ¶¶6, et seq.; also see the various revisions to AT&T F.C.C. Tariff No. 1.

AT&T's assertions in its opposition that, "AT&T's long distance prices are dropping faster than access charges, so not only have the modest reductions in access charges flowed though, but consumers are also enjoying additional price reductions as a result of competition..." is a material misrepresentation, at best. Indeed, a review of AT&T's tariff shows miscellaneous price increases across the board. AT&T has also been increasing prices through additional service fees, dial around fees for non-presubscribed customers, among other things.¹

Commission Chairman Kennard recently complained of the "growing body of evidence that suggests that the nation's largest

¹ In fact, a review of AT&T's F.C.C. Tariff No. 1 shows that AT&T adds over a \$1.00 surcharge to unwary persons who dial 10288 prior to dialing the number, probably based on older AT&T ads which promoted the access code.

long distance companies are raising rates when their costs of providing service are decreasing." Kennard Letter, Feb. 26, 1998.

C. AT&T Has No Interest In Residential Local Service

AT&T's plan to takeover Teleport will not enhance residential consumers' access to choice in local exchange services. On the contrary, AT&T's Teleport purchase shows that AT&T is only interested in providing services to businesses. AT&T has abandoned its plans to offer local exchange service to residential customers. See BellSouth's Petition for Approval at p. 6.

While many people laughed when Keep America Connected sent four-pound jars of cherries to AT&T for their "cherry picking" of the local telephone market, the situation is no laughing matter. Congress specifically intended for alternative local exchange services to be available for all in amending the Communications Act. Yet, AT&T has ignored this responsibility. The merger with Teleport will not aid in the availability of alternative local services to consumers, and thus will not enhance the public interest.

D. AT&T/Teleport Must Be Reclassified as Dominant

In the event of a merger, AT&T should be reclassified as a dominant carrier with respect to domestic, international, and its competitive exchange services. Specifically, AT&T will be the largest competitive local exchange carrier; the largest interstate long distance carrier (especially with TCG and ACC's long distance additions); the largest international carrier; the largest wireless

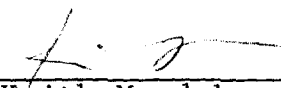
provider; the largest internet service provider; among other things. The inescapable conclusion is that AT&T, in the event of a merger, must be reclassified as a dominant carrier.

II. CONCLUSION

BellSouth's Motion to Dismiss and Petition for Approval with Conditions should be construed as petitions to deny, and sustained. In the alternative, the conditions described in Maydak's Petition to Deny would need to be implemented, especially the reclassification of AT&T as a dominant carrier.

Respectfully submitted,

By:



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CERTIFICATE OF SERVICE

I, Keith Maydak, hereby certify that I have served a copy of the foregoing to the following parties by First Class Mail on this 14th day of April, 1998:

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